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# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 777

JOHN HENRY HARMON, III, PETITIONER

*v.*

WILBER M. BRUCKER, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF THE ARMY

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 99–105) is reported at 137 F. Supp. 475. The opinions of the United States Court of Appeals for the District of Columbia Circuit (Pet. App. 33–57) are not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on January 31, 1957. The petition for a writ of certiorari was filed on February 15, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

## QUESTIONS PRESENTED

1. Whether a person who is discharged from the Army as a security risk and receives a General Discharge under honorable conditions thereby suffers any legally remediable injury.

2. Whether the Secretary of the Army has statutory authority to prescribe a security risk program for military personnel and to issue a certificate of General Discharge under honorable conditions to personnel discharged thereunder.

3. Whether the discharge of petitioner violated any of his statutory or constitutional rights in such manner as to authorize or require the district court to compel a change in the character of the discharge.

4. Whether the district court had jurisdiction to review the discharge.

## STATUTES AND REGULATION INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 19-21. Department of Defense Directive 5210.9 is set forth in the Record, pp. 33–45.

## STATEMENT

Petitioner is a former private in the Army who was discharged by order of the Secretary of the Army in 1954 with an Undesirable Discharge (R. 13–14). He brought suit for a declaratory judgment that this action of the respondent was null, void, and illegal, and for a mandatory order directing the respondent to change the character of the discharge certificate to "Honorable."

Petitioner was inducted into the Army on October 31, 1952, under the Universal Military Training and Service Act, 50 U. S. C. App. 451, *et seq.* (R. 2–3).

On May 7, 1953, he was interrogated by military authorities concerning membership in, association with, or activity on behalf of the Communist Party and persons or organizations connected therewith, and his willingness to bear arms against Communist-dominated and influenced nations. Petitioner answered some of the questions and as to others invoked his privilege against self-incrimination (R. 91–98).

On February 9, 1954, the Adjutant General ordered petitioner to explain in writing certain information relevant to his security status which had been received by the Army. This information concerned petitioner's connection or associations in 1951 and 1952 with activities which were reported to be subversive or Communist-controlled; his registration in New York with the American Labor Party in 1952; his solicitation of contributions for the defense of persons under indictment for violations of the Smith Act; and reports that his father was a member of the Communist Party and that his stepmother associated with Communists or Communist sympathizers (R. 3–4).

On March 11, 1954, petitioner replied to this information. He acknowledged that he worked in 1951 and 1952 at Camp Lakeland, which was reported to be a Communist-operated camp, but asserted it was labelled as Communist-dominated by persons opposed to inter-racial relations. He also acknowledged employment in 1949 by the Detroit Urban League, reportedly a subversive organization, but asserted that he took the job because he needed summer employment and that he did not know the League as a subversive organization. Petitioner did not explicitly

acknowledge that in 1952 he registered to vote with the American Labor Party in New York, which the House Un-American Activities Committee had cited as being under Communist control, but asserted that it was a lawful political organization and that he had the right to vote for the party of his choice. He stated that he had solicited funds for the defense of persons under indictment for violation of the Smith Act, but asserted he had a constitutional right to do so. He refused to reply to the allegations that his father was a member of the Communist Party and of certain organizations on the Attorney General's list of subversive organizations and that his stepmother associated with persons who were Communists or Communist sympathizers, on the ground that such questions were irrelevant. He asserted that he had never been a member of the Communist Party, but stated that it was possible that he, as a public speaker, had been acquainted with Communists or Communist sympathizers (R. 4–6).

On April 2, 1954, petitioner was informed that the Army would not discharge him as "disloyal or subversive," but that he would be assigned to non-sensitive duties in the lowest pay grade, and that, upon completion of his term of service, he would be given a type of discharge appropriate to the character of the service he had rendered (R. 6–7). This determination was based upon the provisions of Army Regulations 615–370 which dealt with the retention of security risks in the Army (R. 29).

On April 7, 1954, the Secretary of Defense issued Department of Defense Directive 5210.9 (R. 33–45).

This directive provided for the modification of outstanding regulations of the armed services so as to apply to military personnel the criteria of the security program established for the government's civilian employees by Executive Order 10450 (April 27, 1953, 18 F. R. 2489). The standard prescribed by the directive for "retention within the Armed Services" was that on "all the available information" it appears that "retention is clearly consistent with the interests of national security" (R. 34, 36). The directive was accompanied by a memorandum from the Secretary of Defense directing that cases previously cleared be reviewed under the new standard (R. 32–33).

The Army thereupon reviewed petitioner's case and determined that his retention in the service was inconsistent with the interests of national security and that he should be discharged with an Undesirable Discharge (R. 30–31). On June 2, 1954, he was so discharged (R. 13, 14). The formal report of his separation erroneously cited Army Regulations 615–370 as the authority for the discharge (R. 14).

At the time of his separation, petitioner's service record was marked "excellent" as to character and efficiency for the periods of November 12, 1952, to July 24, 1953, and August 2, 1953 to April 24, 1954; it was marked "unknown" for the balance of his military service (R. 9, 99).

Immediately after his discharge, petitioner applied to the Army Discharge Review Board to have the character of his discharge changed from Undesirable to Honorable (R. 10). On October 22, 1954, he ap-

peared with counsel at a formal hearing before the Board at which he had the right to present evidence in his behalf, testify in person, or submit a written statement or brief (R. 63). Petitioner testified as the sole witness, giving in an expanded form essentially the same answers he had given the Adjutant General in writing before his discharge, and explaining the reasons he had refused to answer certain questions during his interrogation on May 7, 1953 (R. 63–90). The Army Discharge Review Board ruled against changing the character of petitioner's discharge (R. 10). He then applied to the Army Board for the Correction of Military Records for the same relief, but that Board also denied his application (*ibid.*).

Petitioner then made a direct request to the Secretary of the Army for the award of an Honorable Discharge (*ibid.*). The request was reviewed by an Assistant Secretary of the Army as delegate for respondent. On July 5, 1955, he referred it to the Army Board for the Correction of Military Records (R. 45–46). By letter of July 7, 1955, petitioner's counsel stated that he had no additional evidence to present (R. 52–53). The Assistant Secretary of the Army replied that the Board for the Correction of Military Records would consider all material evidence of record and inquired of counsel whether he intended to appear at the scheduled hearing (R. 54). On July 25, 1955, counsel for petitioner wrote that he would not appear at the hearing because he had no additional material to offer (R. 55–56). The Army Board for the Correction of Military Records then considered petitioner's request on the whole record

before it, and recommended to the Assistant Secretary that his discharge certificate not be changed. On November 10, 1955, after reviewing the matter under the standard of Department of Defense Directive 5210.9, the Assistant Secretary approved the Board's recommendation (R. 45–46).

Subsequent to this request to the Secretary of the Army, but prior to a final determination thereof, the instant action was commenced in the district court (R. 2). After filing of the complaint and answer, the present Secretary of the Army was substituted for his predecessor in office (R. 106). Both sides filed motions for summary judgment with supporting affidavits (R. 17–26, 28–51). The district court held that it had no jurisdiction to review, control or compel the granting of military discharge certificates, and it therefore denied petitioner's motion for summary judgment, granted respondent's motion, and dismissed the complaint (R. 105).

Petitioner appealed from this judgment and, while his appeal was pending, he was notified by The Adjutant General on June 6, 1956, that the character of his discharge was changed from "Undesirable" to "General (under honorable conditions)" (R. 110–111). This change was effected as the result of a review conducted by the Army Discharge Review Board of all military personnel security cases which were closed between November 10, 1948, and November 16, 1955. As a result of this review, petitioner's separation records have been changed to show a discharge under honorable conditions, and a new discharge certificate and report of separation, retroac-

tively reflecting a discharge under honorable conditions, have been furnished him (R. 113–114).

The court of appeals, by order of August 17, 1956, denied the respondent's suggestion that this change in the character of petitioner's discharge rendered the case moot (R. 120). Subsequently, the court, in an opinion by Judge Prettyman, affirmed the judgment of the district court, holding that petitioner had not been denied any statutory or constitutional rights, and that in the absence of such a denial the court did not have authority to review the exercise by the Secretary of the Army of his discretion to determine what type of discharge a soldier should be given (Pet. App. 33–57). Judge Bazelon dissented.

## ARGUMENT

In our view, petitioner has suffered no legal injury by the issuance to him of a General Discharge certificate under honorable conditions, since there is no legally cognizable difference between that certificate and the Honorable Discharge which he seeks. In addition, the court below correctly stated and applied the limitations upon the scope of judicial review of, and control over, the issuance of particular types of military discharge certificates. The decision is in accord with the principles of previous decisions of this Court defining the appropriate degree of judicial supervision over actions of the military establishment with respect to military personnel. Furthermore, the result reached by the court of appeals accords with the manner in which other lower courts have resolved this precise issue and does not present any conflict of de-

cisions. Accordingly, there is no occasion for further review.

1. Whatever legal injury petitioner believes he has suffered must stem from differences recognized by law between the General Discharge and Honorable Discharge certificates. We submit, however, that there is no legally cognizable difference between them and that, therefore, petitioner has not suffered any injury for which judicial relief can be granted.

The effect of the change in the character of petitioner's discharge is to remove the disabilities which constituted the original basis for his claim of injury. He is now eligible for accrued pay, mustering-out pay, and all other veterans' benefits and gratuities provided by the federal government (see the Chart, Incidents of Discharge, R. 59). Neither the Department of the Army, the Veterans' Administration, nor any other federal agency administering veterans benefits distinguishes between the two types of certificates for these purposes. To the contrary, the Army has characterized the General Discharge and the Honorable Discharge as identical in effect. Paragraph 7 of Army Regulations 635–200 provides: "Both the honorable discharge and the general discharge entitle an individual so discharged to full rights and benefits."[1]

[1] The General Discharge certificate is issued where a soldier is to be separated under honorable conditions but does not qualify for an Honorable Discharge (Par. 9, AR 635–200). In addition to soldiers who have been given this type of discharge under the military personnel security program, the General Discharge is issued, *inter alia*, to soldiers discharged for inaptitude or unsuitability (Pars. 1–3, AR 635–209) or for undesirable habits and traits of character (Par. 7, AR 635–208).

Petitioner's eligibility for veterans' benefits under the laws of the State of New York, his domicile, depends, of course, upon that State's construction of its statutes conferring such benefits. It is entirely possible that the phrase "honorably discharged" which appears in some of these statutes would include a discharge under honorable conditions. See, *e. g.*, N. Y. Gen. Bus. Law, Sec. 32, McKinney Bk. 19; N. Y. Mil. Law, Sec. 245, McKinney Bk. 35. We know of no New York authority to the contrary. Indeed, it is highly probable that State officials will accord the same efficacy to a General Discharge as does the federal government. See *Horylev* v. *New York State Bonus Commission,* 220 App. Div. 345, 221 N. Y. S. 548. In any event, the mere possibility that petitioner will be denied state benefits because he has a General Discharge under honorable conditions is too speculative to constitute a basis for judicial intervention. Cf. *United Public Workers* v. *Mitchell,* 330 U. S. 75, 90.

Petitioner's claim of injury is primarily based on the social stigma and prejudice which he alleges will result from the issuance to him of a General Discharge. We do not believe that a claim of prejudice or embarrassment in private life resulting from the granting of the General Discharge, rather than an Honorable Discharge, constitutes a legally remediable injury. Moreover, the claim in this case is at most speculative, for petitioner has not demonstrated that such stigma will result or that the public makes a distinction. Petitioner now has a discharge certificate which is, in terms, under honorable conditions. The Honorable Discharge doubtless carries prestige which

the General Discharge lacks; in its own terms, the Honorable Discharge is "awarded as a testimonial of honest and faithful service." That difference does not mean that a stigma attaches to the General Discharge.

2. Petitioner was discharged from the Army as a security risk pursuant to Department of Defense Directive 5210.9, which established for the armed forces a security program patterned after that prescribed for civilian employees of the Government by Executive Order 10450 (R. 33–45). Congress has never prescribed the various types of military discharges or the conditions under which they are to be given. It has left that matter to the discretion of the Secretary of the Army. Thus, the statute in force at the time of petitioner's discharge (10 U. S. C. 652a) provides merely that no enlisted person shall be discharged prior to expiration of his term of service "except in the manner prescribed by the Secretary of the Department of the Army * * *" (Appendix, *infra*, p. 20).

The authority of the Secretary of the Army in this field is subject to the authority vested in the Secretary of Defense generally to direct and control the administration of the three armed services by their respective secretaries (5 U. S. C. 171a (c) (4)) and specifically to prescribe procedures for the discharge of an inductee prior to the expiration of his term of service (50 U. S. C. App. 451, 454 (b)). (Appendix, *infra*, p. 20). It is clear that these statutes authorized the Secretary of Defense to promulgate Department of Defense Directive 5210.9 and authorized the

Secretary of the Army to issue petitioner a General Discharge pursuant to that valid regulation. The statutory provisions are framed in broad discretionary terms and we know of nothing in their language or history which would indicate a congressional intent to limit the discharge authority of the military departments in the manner urged by petitioner.

Petitioner concedes that Directive 5210.9 was valid insofar as it required that security risks be separated from the military establishment (Pet. 13, 16, 17). He contends, however, that it was not authorized insofar as it required that the character of separation "shall be predicated upon the gravity of the reasonably substantiated information in derogation" (Pet. 16). But if the Army could determine whether or not petitioner was a security risk and could, on that basis, conclude that petitioner was not suitable for any military service whatsoever, it was within the discretion of the Secretary of Defense to include that factor in determining the value of his service and consequently the type of discharge certificate to be issued to him.

3. We believe that, in creating the Army Discharge Review Board (38 U. S. C. 693h) (Appendix, *infra*, pp. 19-20) and the Army Board for the Correction of Military Records (5 U. S. C. 191a) (Appendix, *infra*, p. 20), Congress has established a separate and complete system of review within the military establishment which furnishes the sole remedy for a soldier aggrieved by the character of his military discharge. Congress has provided that the findings of the Discharge Review Board shall be "final subject only to

review by the Secretary of the Army * * *" and that the corrections made by the Board for the Correction of Military Records "shall be final and conclusive on all officers of the Government * * *." Certainly, as noted by the court of appeals (Pet. App. 37), there is no statute which specifically authorizes further review in the courts.

But the court of appeals did not rest its decision on this proposition alone. It also considered petitioner's contention that judicial review was required since, as he argued, the effect of the Army's action was a deprivation of his constitutional rights.[2] The court concluded, correctly, we believe, that there was no such deprivation.

As argued above, petitioner has not suffered any legal injury by the issuance to him of a General Discharge under honorable conditions. Moreover, Department of Defense Directive 5210.9 was a regulation authorized by statute. As stated by the court of appeals (Pet. App. 37–38), "[n]o statute was misapplied in the process or the substance of the discharge. No statute directs or authorizes judicial review of Army discharges." Therefore, petitioner's argument "must rest upon constitutional grounds: that as a matter of due process of law or by some other constitutional requirement he was entitled to court review of the type of discharge which he should be given." The court went on to find that there is no constitutional basis for the relief which petitioner seeks (Pet. App. 41):

[2] It should be noted that Judge Bazelon, in his dissent, did not reach the merits of petitioner's claims, but, having concluded that the district court had jurisdiction to grant review, he urged that the case be remanded to that court for consideration of the merits (Pet. App. 57).

> * * * Reason, flowing from the doctrine of the separation of powers, dictates that in many fields the administrative discretion of the executive branch and the legislative discretion of the legislative branch be not subject to interference or review by the courts. In no field is this doctrine more pertinent and important than in the operation of the armed forces. Provisions for the establishment and operation of such forces necessary to the security of this country are wholly legislative matters, and the administration of those forces is the very essence of executive action. The Constitution so provides. Only in the most extreme cases can the judiciary interfere in this area. As a practicality the operation of military forces requires expeditious, sometimes instant, action and thus requires discipline. From the standpoint of the Army it is easy to see the disastrous effect upon discipline if the type of discharge which could be given an enlisted man were not within the power of the commanding officer or the Secretary, but were subject to litigation and to review and decision by a court wholly removed from the necessities of military affairs. As a further matter of practicality, from the standpoint of the courts review of such matters would impose an appalling burden, with which the courts are wholly unequipped to cope.

The court also pointed out that there was no denial of due process. Petitioner was given adequate notice and a hearing on the allegations against him. Later, in connection with a direct appeal to the Secretary of the Army, he was offered a second hearing which he declined, stating that he had no additional facts to

present (R. 55–56). With respect to substantive due process, "the consideration of pre-induction activity was not frivolous, arbitrary or discriminatory; it was based upon reasonable grounds" (Pet. App. 42). Petitioner was discharged because, upon all the evidence in his case, including his conduct prior to his military service, he was found to be a present security risk in the Army. As stated by this Court in *Garner* v. *Board of Public Works of Los Angeles*, 341 U. S. 716, 720, "Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment." It is imperative that those in the service be completely dependable; there must be no question as to their being security risks. In determining that question, inquiry necessarily is made as to their activities both before and after entry into the service. If it is determined that a serviceman is not trustworthy, he should be discharged from the service. Such a person is not entitled to the same type of discharge as one who is not a security risk. An honorable discharge must be earned. Should honorable discharges be awarded those determined to be security risks, equally with those about whom there is not the slightest question as to security, the morale and discipline of the Army would inevitably be impaired. As a security risk, the value of petitioner's military service is considerably lessened, and we do not believe that the decision of the Secretary to take that factor into con-

sideration in determining the character of petitioner's separation can be said to raise a question of substantive due process of law.[3]

4. Contrary to petitioner's assertion, the decision of the court below does not conflict with applicable decisions of this Court, but accords with the limitations this Court has placed on judicial control over the military department's administration of personnel affairs. Indeed, the cases cited by petitioner as being in conflict (Pet. 24) are not directly applicable for they are not concerned with the problem of the relationship of the judiciary to the military establishment.[4]

The decisions of this Court dealing with problems of internal military administration support the result reached below. Thus, this Court held in *Orloff* v.

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[3] Petitioner also argues that his rights under the Sixth Amendment and the First Amendment were violated. But the discharge of a soldier from the Army is not a criminal prosecution and the guaranties of the Sixth Amendment are not applicable. *Oceanic Navigation Co.* v. *Stranahan*, 214 U. S. 320. And it is difficult to see how petitioner's First Amendment right to freedom of speech could be abridged by the issuance to him of a General Discharge. Petitioner is certainly as free now to express his opinions and political views as he was before he was inducted into the Army. Petitioner relies on the opinion of this Court in *American Communications Association* v. *Douds*, 339 U. S. 382, for the proposition that the First Amendment may be violated by indirect restraints and punishment. But in upholding the validity of Section 9 (h) of the National Labor Relations Act, this Court stated (339 U. S. at 402–403): "But we have here no statute which is either frankly aimed at the suppression of dangerous ideas nor one which, although ostensibly aimed at the regulation of conduct, may actually 'be made the instrument of arbitrary suppression of free expression of views.'" That is equally true here.

[4] Thus, *Cantwell* v. *Connecticut*, 310 U. S. 296, held that a state statute forbidding solicitation of money for any religious

*Willoughby*, 345 U. S. 83, that it would not review the failure of the Army to commission a physician inducted under the Doctor's Draft Act, stating (345 U. S. at 93–94):

> We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism, or other objectionable handling of men. But judges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters. * * *

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cause without state certification was a previous restraint upon the free exercise of religion in violation of the Fourteenth Amendment. In *American Communications Association* v. *Douds*, 339 U. S. 382, this Court sustained the constitutionality of Section 9 (h) of the National Labor Relations Act, which denied the benefits of certain provisions of that Act to labor unions whose officers failed to file "non-Communist" affidavits. In *Hague* v. *C. I. O.*, 307 U. S. 496, a city ordinance forbidding public assembly in streets or parks without permission from a city official, who might refuse if in his opinion refusal would prevent public disorder, was held invalid on its face. And, finally, in *Wieman* v. *Updegraff*, 344 U. S. 183, this Court held unconstitutional a state statute requiring a loyalty oath as a condition of public employment where no distinction was drawn between innocent and knowing associations.

And in *Reaves* v. *Ainsworth*, 219 U. S. 296, this Court, in holding that it lacked authority to reinstate to duty status an officer discharged by a properly constituted military board, although he claimed his discharge was illegal, declared (219 U. S. at 306):

> * * * The courts have no power to review. The courts are not the only instrumentalities of government. They cannot command or regulate the Army. * * * If it had been the intention of Congress to give to an officer the right to raise issues and controversies with the board upon the elements, physical and mental, of his qualifications for promotion and carry them over the head of the President to the courts, and there litigated, it may be, through a course of years, upon the assertion of error or injustice in the board's rulings or decisions, such intention would have been explicitly declared. The embarrassment of such a right to the service, indeed the detriment of it, may be imagined.

Furthermore, in dealing with the specific question of judicial control over military discharges, the lower courts have been in agreement in denying relief in circumstances similar to those presented here and in ruling that these are matters of military personnel administration. *Gentila* v. *Pace*, 193 F. 2d 924 (C. A. D. C.); *Davis* v. *Woodring*, 111 F. 2d 523 (C. A. D. C.); *Bernstein* v. *Herren*, 141 F. Supp. 78 (S. D. N. Y.), affirmed on other grounds, 234 F. 2d 434 (C. A. 2), certiorari denied, 352 U. S. 840; *Marshall* v. *Wyman*, 132 F. Supp. 169 (N. D. Cal.); *Nordmann* v. *Woodring*, 28 F. Supp. 573 (W. D. Okla.). Thus,

no conflict of decisions is presented for resolution by this Court.[6]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
*Solicitor General.*
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APRIL 1957.

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[6] In addition, it is settled law that, as stated in the opinion below, "The courts will not direct by *mandamus* any executive action which lies within the realm of executive discretion" (Pet. 46–47).

## APPENDIX

38 U. S. C. 693h provides in pertinent part:

> The Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy, after conference with the Administrator of Veterans' Affairs, are authorized and directed to establish in the Army, Air Force, and Navy Departments, respectively, boards of review composed of five members each, whose duties shall be to review, on their own motion or upon the request of a former officer or enlisted man or woman or, if deceased, by the surviving spouse, next of kin, or legal representative, the type and nature of his discharge or dismissal, except a discharge or dismissal by reason of the sentence of a general court martial. Such review shall be based upon all available records of the service department relating to the person requesting such review, and such other evidence as may be presented by such person. Witnesses shall be permitted to present testimony either in person or by affidavit and the person requesting review shall be allowed to appear before such board in person or by counsel: * * *. Such board shall have authority, except in the case of a discharge or dismissal by reason of the sentence of a general court martial, to change, correct, or modify any discharge or dismissal, and to issue a new discharge in accord with the facts presented to the board. The Articles of War and the Articles for the Government of the Navy are amended to authorize the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy to establish such boards of review, the findings thereof to be final subject only to review by the Secretary of the

Army, the Secretary of the Air Force or the Secretary of the Navy, respectively * * *.

5 U. S. C. 191a provides in pertinent part:

> The Secretaries of the Army, Navy, and Air Force, respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective Departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or remove an injustice, and corrections so made shall be final and conclusive on all officers of the Government except when procured by means of fraud * * *.

10 U. S. C. 652a provides:

> No enlisted person, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, and no enlisted person shall be discharged from said service before his term of service has expired, except in the manner prescribed by the Secretary of the Department of the Army, or by sentence of a general or special court-martial.

50 U. S. C. App. 454 (b) provides:

> Each person inducted into the Armed Forces under the provisions of subsection (a) of this section shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred, or discharged in accordance with procedures prescribed by the Secretary of Defense (or the Secretary of the Treasury with respect to the United States Coast Guard) or as otherwise prescribed by subsection (d) of section 4 of this title [subsection (d) of this section].

5 U. S. C. 171a (c) (4) provides:

> The Departments of the Army, Navy, and Air Force shall be separately administered by their respective Secretaries under the direction, authority, and control of the Secretary of Defense.

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